

NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO COMMENT

DRAFT Order No. R1-2024-0001

General Waste Discharge Requirements
for
Discharges Related to Specific Types of Forest Management Activities
on Non-Federal Lands in the
North Coast Region

NOTICE IS HEREBY GIVEN that the North Coast Regional Water Quality Control Board (Regional Water Board) will receive comments on the above-referenced Draft Order no later than **October 26, 2023**, in accordance with this notice, and a public hearing to consider comments and objections to the Draft Order is scheduled for Thursday or Friday, **February 8 or 9, 2024**, at 8:30 a.m. in the Regional Water Board Hearing Room, 5550 Skylane Blvd, Suite A, in Santa Rosa, California. This meeting is scheduled to occur with both a physical meeting location and an option for remote participation via video and teleconference. At the public hearing, the Regional Water Board will consider whether to affirm, reject, or modify the Draft Order.

Live video and audio broadcasts of the public hearing will be available via the internet and can be accessed at the [CalEPA Public meeting live webcasts webpage](https://video.calepa.ca.gov) (<https://video.calepa.ca.gov>). The public hearing will be recorded.

Please be aware that dates and venues may change. In accordance with the Bagley Keene Open Meeting Act (Gov. Code, § 11120 et seq.), an agenda will be posted to the Board's website at least 10 days in advance of the meeting. The agenda will specify any updates to the meeting format. The Regional Water Board's website address is: <http://www.waterboards.ca.gov/northcoast> where you can access the current agenda for changes in dates and locations.

Overview

The Draft Order would replace the Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region, Order No. R1-2014-0011, renewed by Order No. R1-2019-0008 (Conditional Waiver).

The State's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Implementation Policy) requires that "all current and Draft nonpoint source discharges must be regulated under WDRs, waivers of WDRs, a basin plan prohibition, or some combination of these tools." The Regional Water Board regulates waste discharges from timber harvesting activities in the North Coast under general or individual waste discharge requirements (WDRs) or waivers of waste discharge requirements.

Since 2004, the Regional Water Board has had two general permits available for the majority of timber harvest plans, the General WDR, Order No. R1-2004-0030, and the Conditional Waiver. In 2004, Regional Water Board staff developed the two-permit system that would regulate timber harvesting projects that pose a low or insignificant risk of waste discharge under the Conditional Waiver and all other timber harvest projects under the General WDR. The Conditional Waiver applies to the specific categories of timber harvest activities listed below as defined in the California Forest Practice Rules (FPRs) and established general and specific conditions and eligibility

criteria for each category that were considered to result in low impact timber harvesting projects that pose no significant threat to water quality. Those timber harvesting projects include:

- Exemptions conducted pursuant to 14CCR 1038
- Emergencies conducted pursuant to 14CCR 1052
- Less than 3-acre conversion exemptions pursuant to 1104.1
- Sediment TMDL Action Plan Compliant Timber Harvest Plans
- Modified Timber Harvest Plans (THPs) pursuant to 14CCR 1051
- Other projects (Timber Harvest Plans and other CEQA compliant timber harvesting projects)

The Conditional Waiver is only infrequently used for standard timber harvest plans (over 90% of landowners seek coverage under the General WDR) and the additional documentation by landowners and review by staff required for each enrollment make it somewhat cumbersome and inefficient to use. Regional Water Board staff believe that it is no longer necessary to retain a second general permit for enrolling THPs. However, the need remains for a permitting mechanism for Emergencies and Exemptions as well as sediment TMDL compliant timber harvest plans, Modified timber harvest plans, and other forest management projects.

Timber Salvage conducted under Emergency Notices of Timber Operations

Since 2017, the Regional Water Board has increased its oversight and investigation of post-fire timber salvage operations in the North Coast Region. Before that time, post-fire timber salvage operations received less review or oversight by the Regional Water Board due to their infrequent use or perceived threat to water quality. In 2018, Regional Water Board staff initiated a post-fire timber salvage monitoring effort to review these activities and their authorization process, as well as to contemplate the adequacy of the Regional Water Board's own permitting mechanism to protect water quality during post-fire timber salvage operations.

In 2018, CAL FIRE and other forest practice review team agencies, including the Regional Water Board, initiated monitoring of Emergency Notices to evaluate project performance as required following the passage of Senate Bill 901. The resulting 2019 Monitoring Report identified that performance on 40% of the Emergency Notices surveyed was identified as either "substandard" or "unacceptable" as that relates to water quality protections. These results have become the catalyst for increased scrutiny of these project activities as the monitoring revealed that the existing authorization processes for Emergency Notices should be reevaluated.

Since that time, CAL FIRE, the Board of Forestry, and the review team agencies have taken multiple actions to address these shortcomings and to improve project performance, including but not limited to: increased inspections; dissemination of information to registered professional foresters, licensed timber operators and landowners; new regulatory informational flyers that are distributed with each Emergency Notice authorization, increased enforcement for regulatory violations, and changes to the Forest Practice Rules.

Regional Water Board staff have identified several areas of concern that remain, including clarification of which FPRs are considered to be “operational provisions”, and improving agency oversight of construction and reconstruction of road and watercourse crossings, which we believe would improve the Emergency Notice authorization and project performance. The Board of Forestry and CAL FIRE staff, in collaboration with the Water Boards and California Department of Fish and Wildlife, are currently working on Draft rule changes and guidance to address these concerns.

In 2023, CAL FIRE staff, with support from the other review team agencies (including the Water Boards), conducted another round of Emergency Notice monitoring to determine whether performance of these projects improved as a result of the proactive outreach and education efforts. The results of the 2023 monitoring will be made available for public review in late 2023 and may influence the eventual changes being Draft by the Board of Forestry, CAL FIRE, and ultimately the Regional Water Board.

In 2023, CAL FIRE staff, with support from the other review team agencies (including the Water Boards), conducted another round of probabilistic monitoring of Emergency Notices of Timer Operations to determine whether performance of these projects improved as a result of the proactive outreach and education efforts. The results of the 2023 monitoring will be made available for public review in late 2023 and may influence the eventual changes being Draft by the Board of Forestry, CAL FIRE, and ultimately the Regional Water Board.

Given the improvements to the EN process since 2017, Draft changes to the FPRs and guidance, existing water quality protections offered under the Board’s permitting framework, and the impending expiration of the Conditional Waiver, Board staff recommends adoption of the Draft Order at this time. The Regional Water Board may deem it necessary to revise the Order at a later date depending on the outcome of Board of Forestry’s rulemaking efforts and the results of the 2023 monitoring.

Draft Order

Draft Order No. R1-2024-0001 includes very few changes to the existing Conditional Waiver and seeks to maintain the ministerial authorization and administration process to regulate these activities. The Draft Order includes revised findings, minor reorganization and editing to improve clarity, revisions to general requirements applicable to all categories (Section I), and specific requirements of Category E (previously F) (Section II), and revised application and termination procedures for Categories C, D, and E (Section III).

Notable changes to the existing Conditional Waiver included in Draft Order R1-02024-0001 include the following:

- The Draft Order replaces the Conditional Waiver with General Waste Discharge Requirements, which do not expire every five years. This will reduce the administrative burden on Regional Water Board staff but carry forward necessary water quality protections and requirements.

- Former Conditional Waiver Category F, “Other Projects”, is now Category E in the Draft Order. Category E was previously eliminated several years ago as that related to “Non-Industrial Timber Management Plans”, which the Regional Water Board decided to regulate through a different permit altogether. The new Category E within the Draft Order removes “standard timber harvest plans” from eligibility because they are primarily authorized through the existing Timber General Waste Discharge Requirements Order (Order No. R1-2004-0030). The Eligibility Requirement in the new Category E is now written as follows:

“Any other forest management Project that Regional Water Board staff have determined is in compliance with CEQA and implements management practices designed to protect water quality. Timber Harvesting Plans as described in 14CCR 1032 are not eligible for coverage under Category E.”

- Seven of the eleven Specific Conditions of the Category F of the Conditional Waiver have been eliminated from Category E of the GWDR, as these conditions were specifically targeted towards timber operations conducted under timber harvest plans. The remaining four Specific Requirements are well suited to forest management projects that would be eligible for coverage under Category E and include:
 - Identification and treatment for sites that have the potential to adversely impact beneficial uses of water;
 - Restrictions of specific operations between November 15 and April 1;
 - Restrictions on use of heavy equipment or log hauling during saturated soil conditions; and
 - A requirement that roads in the project area be hydrologically disconnected from watercourses to the extent feasible and practicable.
- The Draft Order clarifies the full scope of exemptions covered under Category A. This Category includes timber operations exempted from THP preparation and submission requirements under FPR 1038, including all revisions to section 1038 made by the Board of Forestry subsequent to the adoption of the previous Categorical Waiver.
- A new General Requirement clarifies monitoring requirements, consistent with FPR 1050 and the Nonpoint Source Policy. Monitoring inspections are required for all project categories when access is feasible during the prescribed maintenance period. Monitoring shall be conducted a sufficient number of times during the extended wet weather period, particularly after large winter storm events and at least once annually.
- Section IV, **Termination Of Coverage**, now clarifies that projects enrolled under Categories A through D will remain covered through the erosion control maintenance period, unless enrollment is terminated or rescinded for other specific reasons. Responsible Parties with projects enrolled under Category E must request unenrollment by submitting a Notice of Termination. Those projects will remain enrolled until the Responsible Party receives a letter signed by the

Regional Water Board Executive Officer affirming that the project has been unenrolled.

Document Review

Copies of the Draft Order, related documents, and comments received are on file and may be inspected or copied at the Regional Water Board office during normal business hours or viewed at:

http://www.waterboards.ca.gov/northcoast/board_decisions/tentative_orders/

http://www.waterboards.ca.gov/northcoast/public_notices/public_hearings/npdes_permits_and_wdrs.shtml

For further information, please contact Regional Board staff member Jim Burke (707) 576-2289 or James.Burke@waterboards.ca.gov.

Written Public Comment Period

The Draft Order is available for public review for 30 days, from September 26, 2023, to 5:00 p.m. and ending on **October 26, 2023**. Persons wishing to comment in writing on the Draft Order must submit comments to the Regional Water Board no later than the close of the 30-day public review period, 5:00 p.m. on approximately October 26, 2023, in order to ensure written responses to their comments prior to the Board hearing.

Written comments may be submitted by US mail, email, or fax to Jim Burke at:

North Coast Regional Water Quality Control Board

5550 Skylane Blvd., Suite A

Santa Rosa, CA 95403

James.Burke@waterboards.ca.gov

(707) 523-0135 Fax

Written material received after the above date will not be accepted except at the discretion of the Regional Water Board Chair. Untimely written material will not be accepted or incorporated into the administrative record if doing so would be prejudicial. The Chair may choose to modify this rule upon a showing of severe hardship (California Code of Regulations, title 23, sections 648.1 and 648.4).

Public Hearing Procedures

The public meeting to consider the Draft Order has been scheduled for Thursday, February 8 or 9, 2024, in the Regional Water Board Hearing Room, 5550 Skylane Blvd, Suite A, in Santa Rosa, California or as otherwise noticed in the Meeting Announcement. Please be aware that dates and venues may change.

Oral comments or testimony will be accepted at the hearing. The time limit for public oral comments or testimony will be 5 minutes; however, additional time may be provided, upon request, at the discretion of the Regional Water Board Chair. A timer may be used, and speakers are expected to honor the time limits. Where speakers can

be grouped by affiliation or interest, such groups will be expected to select a spokesperson and not be repetitive.

The procedures governing Regional Water Board hearings may be found in the California Code of Regulations, title 23, section 648 et seq. and are available up on request.

Accessibility

For directions to the North Coast Regional Water Quality Control Board offices, please refer to: http://www.waterboards.ca.gov/northcoast/about_us/contact_us.shtml. Parking for the meetings is available onsite. Individuals requiring special accommodations are requested to contact Ms. Deidre Wilkerson, Executive Assistant, at (707) 576-2066 or Deidre.Wilkerson@Waterboards.ca.gov at least five days prior to the meeting. TTY/TDD/Speech-to-Speech users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.

Ex Parte Communications

Ex parte communications are allowed in this matter subject to the disclosure requirements of Water Code section 13287. A form to assist in this process can be found on the Regional Water Board's website at:

http://www.waterboards.ca.gov/northcoast/public_notices/pdf/2013/130118_NorthCoast_disclosure.pdf

The Water Board is required to post the disclosure on its website and to distribute it via any electronic distribution list for the Draft Order. Ex parte disclosures shall not constitute written comments or evidence on a Draft general order. You must provide the comments or evidence by following the procedure and timelines provided above. **Ex parte communications are prohibited for a period beginning 14 days before the board meeting at which the Draft order is scheduled for board action.** For communications concerning any issue in this proceeding, ex parte communications are prohibited starting on January 25, 2024. If the board does not take action on February 8 or 9, 2024, the ex parte prohibition will remain in place until the board, the Chair or the Executive Officer directs otherwise. Once lifted, the prohibition on ex parte communications may be reinstated for 14 days before the day of the board meeting to which the decision is continued. The Board will provide notice via the Lyris and the interested persons email lists for this item if the prohibition is lifted and/or reinstated.

Regional Water Board Staff Contact

Questions regarding the Draft Order should be directed to Jim Burke, North Coast Regional Water Quality Control Board, 5550 Skylane Blvd., Suite A, Santa Rosa, CA, 95403, by phone (707) 576-2289, or email at James.Burke@waterboards.ca.gov